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**TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT:
IMPACT ON HUMAN RIGHTS ENFORCEMENT IN UGANDA**

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**A DESERTATION SUBMITTED TO THE FACULTY OF LAW IN
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DEDICATION

I sincerely dedicate this book to Mr. Jan Jacob Hoppers for his overwhelming support both spiritually , financially and morally , without which this course would still be a dream. May the Almighty GOD Sincerely reward you.

I also dedicate this book to the board of Afrika Societeit Netherlands as a sign of appreciation for the moral, financial support, trust and love. Because of this board my dream has become a reality; I will forever be indebted to you. And may the good LORD bless you all.

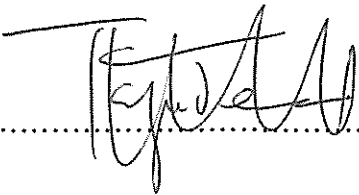
I also dedicate this book to my dear uncle Mr. Akwabai Stephen Onyait for the love, care financially, morally, I will forever be proud of you .And may GOD bless you.


APPROVAL

This is to satisfy that this dissertation has been done under my supervision and submitted to the school of law for examination with my approval.

Mr. TAJUDEEN SANNI

(Supervisor)

Signature 

Date 

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I am deeply indebted to a number of people whose help enabled this work to succeed and these include;

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ABSTRACT

The research paper discuss what torture is, the origin of torture, its historical developments, types of torture both in the ancient and modern, the research further goes on to discuss the illegality of torture citing treaties and convections that prohibit torture this include the UN Convection Against Torture and Cruel, Inhuman and Degrading Treatment, The Universal Declaration of Human rights the 1995 constitution of Uganda all prohibit torture practices; however despite this conventions security forces continue to use torture and physical violence during interrogation and to punish both pre-trial detainees and convicted prisoners. Although authorities periodically issue directives against the use of torture by police, the problem persists and remains an issue in contention.

LIST OF CASES

1. Githinji Mwangi v. R (1954)21 EACA 410
2. Susan Kigula & 147 Ors Vs. Attorney General Constitutional Petition No. of 2003

LIST OF STATUTES

1. African Charter on Human and People's Rights
2. 2010 Constitution of Kenya of 1984
3. UN Convention Against Torture
4. Declaration on the Protection Against Torture
5. Diplomatic Privileges Act 1964
6. Evidence Act Cap 80
7. Kenya Penal Code
8. Police Act Cap 84
9. States Immunity Act
10. Statute of International Criminal Court
11. Treaty of Rome
12. Universal Declaration of Human Rights

LIST OF ACRONYMS

AI	Amnesty International
ICN	International Council of Nurses
ICCPR	International Covenant and Political Rights
IDPs	Internally Displaced Persons
IMLU	Independent Medico-Legal Unit
IRCTV	International Rehabilitation Council for Torture Victims
UHRC	Uganda Human Right Commission
NGOs	Non Governmental Organizations
PAT	People Against Torture
UN	United Nations
UNVFT	United Nations Voluntary Fund for Victims of Torture
WMA	World Medical Association
WCPT	World Confederation of Physical Therapy
WPA	World Psychiatric Association

CHAPTER ONE

1.1 Introduction and Background to the study.

Article I of UNCAT defines torture as

“Any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed or coercing him or a third party or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from inherent in or incidental to lawful sanctions.”¹

Torture has existed worldwide for ages but has received some attention in modern times. Torture more than any other form of human rights violation² gives the most poignant meaning to the phrase “pure evil.” Article 2 of the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment in clause 2 states that there are no exceptional circumstances whatsoever whether a state of war or a threat of war, internal political instability or any other public emergency that may be invoked as a justification of torture.

Article 2 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment states in paragraph I that each state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

¹ The UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment of 1984

² *ibid*

Article 2 paragraph 3 states that an order from a superior officer or public authority may not be invoked as a justification for torture.

Article 3 paragraph I states that no party shall expel, return or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.³

Article 3 paragraph 2 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment herein after referred to as Convention Against Torture (CAT) states that for the purpose of determining whether there are such grounds referred to in Article 3 paragraph I, the competent authorities shall take in to account all relevant considerations including where applicable, the existence in the state concerned of a consistent pattern of mass violations of human rights.

Article 4 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment in paragraph I states that each state party shall ensure that all acts of torture are offences under its criminal law⁴. The same shall apply to an attempt to commit torture and to an act by a person which constitutes complicity or participation in torture. This article also states that each state party shall make offences referred into in paragraph 1 made punishable by appropriate penalties which take in to account their grave nature⁵.

1.2 Statement of the problem.

The police force in Uganda which is responsible for maintenance of law and order are the main perpetrators of torture. The members of the public do not know how to react to arrest and do not

³ ibid

⁴ ibid

question apparent excesses of the arrestors. They thus become prone to torture. Also the courts in Uganda hardly concern themselves with how a prisoner came to court just like they do not concern themselves with how evidence was obtained.

Prisons conditions in Uganda are inhuman and degrading. Thus the need for recommendations and reform to ensure that the rights of members of the public are not infringed and that redress is afforded if the rights are infringed, particularly the rights of torture victims and prisoners against torture, inhuman and degrading treatment.

1.3 Objectives of the study.

1.3.1 Main Objective.

The researcher's main concern is to analyze the impact of torture on human rights in Uganda and to determine loopholes in the legislation. Visas vie considering options or strategies that can be applied to cover loopholes.

1.3.2 Specific Objectives.

- i) The study also intends to put forward the case for the necessity or importance of preventing torture and protecting torture victims.
- ii) To examine the relevant legislation and analyze the provision put in place to protect torture victim's both nationally and internationally.
- iii) The study also aims at suggesting a policy or strategy of strengthening the weakness sighted in the protection offered in order to attain a more effective means of protecting the people more so the torture victims.

iv) Seek to ensure that Article 24⁵ of the 1995 constitution of Uganda which provides for the non derogable rights and as provides for freedom from torture, inhuman or degrading treatment is complied with. Strive to ensure that perpetrators of torture are prosecuted under the law. Strive to ensure that torture becomes an offence under the penal code.

1.4 Method.

In an attempt to answer the objectives the researcher adopts qualitative mode of research. Therefore the writer will use data collected by means of research which will comprise of liberty information, text books, statutes, case law, seminar papers and many other legal related materials to the subject matter. The writer adopts this mode of research because it's appropriate for the topic, it's easy to use since there will be no interviews, and it's also cheap compared to other modes of research.

1.5 Scope of the Study.

This study shall cover the geographical area of Kampala in Uganda; the protection offered to torture victims in Uganda, the nature of torture being perpetrated the study shall analyze the question as to whether the protection Uganda is effective in achieving its sole purpose of eradicating torture. In attempting to answer the previous questions the study shall consider domestic legislations such as the Anti Torture Act, the 1995 Constitution of Uganda, evidence Act and other international instruments such as the UN Convention Against Torture and other Cruel, Inhuman and Degrading Treatment OF 1984, The Universal Declaration of Human Rights and many more.

1.6 Justification of the study.

Torture is not yet a specific offence under the penal code therefore allegations of torture are dealt with as assault which may be difficult to prove. Torture incidences when reported to the law enforcers are not followed up. Perpetrators of torture are not punished under criminal law; this makes it harder for, torture victims to report torture incidents. Prison conditions in Uganda are degrading and inhuman.

Torture victims are not compensated and if they are, they are not adequately compensated.

1.7 Literature Review.

There is a lot of literature written on human rights as whole however when it broken-down to the aspects of torture it has literature but is limited to web material, reports ,articles, and textbooks as seen below:-

Dr Marcelo .N .Vinar in his book civilisation and torture:beyond the medical and psychiatric approach contains that torture has existed for as far as ancient times this is evidenced by his statement “although the horrors of Torture are a story as old as human history, they may not be written off as mere ancient savagery. Rather, they must be seen as something that has constantly accompanied the unfolding tale of our species. The wars and genocides of the twentieth century, the Nazi concentration camps, South African apartheid, Pol Pot and Guanta´namo Bay all remind us that torture stubbornly recurs. Moreover, its development and refinement go hand in hand with other advances in knowledge. Experts have devised means and procedures of torture which did not exist in the past. The humiliation and physical ill-treatment which has always been employed have been joined by even crueller and more effective techniques⁶.

⁶ Civilization and torture: beyond the medical and psychiatric approach by Dr Marcelo.N.Vin`ar page 620

He further argues that The traditional expedients of making the victim stand on one leg for a long time, waterboarding and other types of near-suffocation, electric shocks and sensory deprivation have all been surpassed by cleverer strategies designed not to kill or destroy victims, or to prolong their agony, but to ensure their survival in order to turn them into willing collaborators. If physical and mental torment is not enough, one can systematically deprive the victim of sleep, food and light while issuing cunning threats, then alternate all this with techniques of persuasion and the promise of rewards. After varying lengths of time depending on the victim's endurance there arises a psychotic state in which victim no longer recognizes himself, and perceives himself as worthless⁷.therefor looking at the current forms of torture i seem to agree with Dr Marcelo .N .Vinar on the fact that the traditional modes of torture have been surpassed by more cruel modes

The frightening lesson is that the definition of modern torture cannot be restricted to physical torment and temporary humiliation. The definition lies not in the technical aspects of the process but rather in the goal: demolition by means of a variety of sophisticated methods selected for the individual concerned. In other words, reducing a human being to a state in which he has no control over his thoughts, depriving him of everything that defines him as an individual and, through intense pain and shame, gradually making him a puppet of his master. I stress that when speaking of systematic and sophisticated torture, we must not confine ourselves to listing the means of inflicting physical suffering this include extreme pain, hunger, thirst etc and psychological torment can include isolation, sensory deprivation, sleeplessness which, when methodically applied for a sufficient length of time, can turn a person into a shadow of his former self. What must be emphasized is the extent to which the suffering of even a few dozen victims can instil terror and panic in the entire target community. Quite apart from the findings of

⁷ I bid 8

psychiatric experts and specialists, we have all known since we were small, with our childhood fears, our dreamlike or hallucinatory pre-knowledge of death, pain and suffering, that no direct experience is required to know what agony is. This latent knowledge can quickly be transformed into panic. The torture victim, that is, the resulting shadow of his former self, is cut adrift and deprived of everything that identifies and shapes him as a human being. This demolition, this hallucinatory stage of psychosis artificially induced by torment and sensory deprivation subtly alternated for a prolonged period reduces the victim to a pitiful state close to the agony where, as Hannah Arendt said, the person himself does not know if he is alive or dead⁸.this in my opinion cause grave effects to the victim which cause complications both physical and mental.

It is somewhat amazing to think of bracketing together such conflicting notions as medicine and torture. But they both have the power to pinpoint, focus on and render communicative this intimate space where latent ancestral fears, such as the dread of infinite pain, have always lurked. What frightens us is not so much dying, but something even worse: endless suffering. This is a motif for fables, literary phobias, children's tales and some religious myths from all ages in every part of the world. It is a universal fear which stays with us throughout our lives. Illness and torture make real and palpable a potential of which we have always been aware, which was there prowling around us, besieging us in silence, signalling one of the basic elements of the human condition: the sentient body and its expression in speech. Dread of the destruction of the message is tantamount to the destruction of the psyche "Gantheret" 20 and the hangman's victory means a return to unbearable memories. For this reason we find raw testimony obscene and psychologically indigestible; it prompts only consternation and alienation, and in these extreme situations there is no room for thought which requires a familiar representation of emotion.

⁸ Ibid at page 620

When you are terrified you cannot think, you can only survive or succumb. The process we normally call “thought” does not occur during trauma regardless of whether that trauma lasts a minute or several years but afterwards, in the subsequent phases we call the development of marks and after-effects. But anxiety about the closeness of the Fates is not the same, although in both cases a dreadful threat pulverizes the comforting feeling of being alive. The sudden onset of an illness unleashes a battle with the unknown forces of destiny. It conjures up the vision of malicious gods bent on upsetting reason as the normal link between causes and effects.

But the people around us who support us and buoy us up not only become more visible, but usually become kinder and more caring, which can make us even more human. The opposite is true of institutionalized torture, which shatters the social network which makes us human. Its source is clear and identifiable: it is our fellow human beings who turn us into small, frightened, cornered animals and it is their triumphant and arrogant will that mires us in interminable suffering. One can even imagine the torturer thinking “You must die or suffer never-ending torment because you are of a different race, religion or political conviction. You and yours, everything you were, or believed, will be turned to dust.”⁹ Basing on this previous statement it implies torture has existed for every long time since religion, race and politics are not new issues.

This manual acts as a source of literature to this research paper Professional Training Series no. 8/rev.1 United Nations New York and Geneva, 2004 Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

⁹ Ibid at page 625

According to the Istanbul Protocol Manual of 2004 Torture is a profound concern of the world community. Its purpose is to destroy deliberately not only the physical and emotional well-being of individuals but also, in some instances, the dignity and will of entire communities. It concerns all members of the human family because it impugns the very meaning of our existence and our hopes for a brighter future¹⁰ this statement is in agreement with my research topic

Although International Human Rights and Humanitarian law consistently prohibit torture under any circumstance, torture and ill-treatment are practised in more than half of the world's countries. The striking disparity between the absolute prohibition of torture and its prevalence in the world today demonstrates the need for States to identify and implement effective measures to protect individuals from torture and ill-treatment.¹¹

This manual was developed to enable States to address one of the most fundamental concerns in protecting individuals from torture effective documentation. Such documentation brings evidence of torture and ill-treatment to light so that perpetrators may be held accountable for their actions and the interests of justice may be served. The documentation methods contained in this manual are also applicable to other contexts, including human rights investigations and monitoring, political asylum evaluations, the defence of individuals who "confess" to crimes during torture and needs assessments for the care of torture victims, among others. In the case of health professionals who are coerced into neglect, misrepresentation or falsification of

¹⁰ Page 1 para2 2004 Istanbul Protocol Manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment

¹¹ Page 1 *ibid*

evidence of torture, this manual also provides an international point of reference for health professionals and adjudicators alike¹².

During the past two decades, much has been learned about torture and its consequences, but no international guidelines for documentation were available prior to the development of this manual. The Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is intended to serve as international guidelines for the assessment of persons who allege torture and ill-treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative body. This manual includes principles for the effective investigation and documentation of torture which if followed could help prevent torture cases and even abolish it in the long run¹³

The right to be free from torture is firmly established under International law. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment all expressly prohibit torture. Similarly, several regional instruments establish the right to be free from torture. The American Convention on Human Rights, the African Charter on Human and Peoples' Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms all contain express prohibitions of torture.

¹² Page 1 para 3, 2004 Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

¹³ Page 1 para 4 Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2004

International humanitarian law the International Treaties governing armed conflicts establish International Humanitarian law or the law of war. The prohibition of Torture under International Humanitarian law is only a small, but important, part of the wider protection these treaties provide for all victims of war. The four Geneva Conventions of 1949 have been ratified by 188 States. They establish rules for the conduct of International armed conflict and, especially, for the treatment of persons who do not, or who no longer, take part in hostilities, including the wounded, the captured and civilians. All four Conventions prohibit the infliction of Torture and other forms of ill-treatment. Two Protocols of 1977, additional to the Geneva Conventions, expand the protection and scope of these Conventions. Protocol I ratified to date by 153 States covers international conflicts. Protocol II which is ratified to date by 145 States covers non-international conflicts¹⁴.

There a number of relevant international legal standards that are trying to help in the advocacy of prevention of torture this include the United Nations, The United Nations has sought for many years to develop universally applicable standards to ensure adequate protection for all persons against torture or cruel, inhuman or degrading treatment. The Conventions, Declarations and Resolutions adopted by the Member States of the United Nations clearly state that there may be no exception to the prohibition of torture and establish other obligations to ensure protection against such abuses. Among the most important of these Instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the

¹⁴ Page 3 istanbul protocol manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment 2004

Standard Minimum Rules for the Treatment of Prisoners, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Declaration on the Protection Against Torture the Code of Conduct on Special Rapporteur on the question of torture¹⁵

The Special Rapporteur's authority to monitor extends to all Member States of the United Nations and to all States with observer status, regardless of the State's ratification of the Convention against Torture. The Special Rapporteur establishes contact with Governments, asks them for information on legislative and administrative measures taken to prevent torture, requests them to remedy any consequences and asks them to respond to information alleging the actual occurrence of torture. The Special Rapporteur also receives requests for urgent action, which he or she brings to the attention of the Governments concerned in order to ensure protection of an individual's right to physical and mental integrity¹⁶.

In addition, the Special Rapporteur holds consultations with government representatives who wish to meet with him or her and, in accordance with the position's mandate, makes *insitu* visits to some parts of the world. The Special Rapporteur submits reports to the Commission on Human Rights and to the General Assembly. These reports describe actions that the Special

¹⁵ Page 4 istanbul protocol manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment 2004

¹⁶ Para 2o of the istanbul protocol manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment 2004

Rapporteur has taken under his or her mandate and persistently draw attention to the importance of prompt investigation of torture allegations¹⁷.

Under paragraph 21 of the report The Special Rapporteur emphasized this recommendation in his report of 9 January 1996.²⁴ Discussing his concern about torture practices, the Special Rapporteur pointed out in paragraph 136 that “both under general International law and under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, States are obliged to investigate allegations of torture”¹⁸.

The Special Rapporteur urges the competent national authorities not only to provide comprehensive information on the case but also to carry out an independent and impartial investigation concerning the case transmitted and to take immediate action to ensure that no further violation of the human.¹⁹

The Special Rapporteur emphasized this recommendation in his report of 9 January 1996.²⁴ Discussing his concern about torture practices, the Special Rapporteur pointed out in paragraph 136 that “both under general international law and under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, States are obliged to investigate allegations of torture”.²⁰

¹⁷ Ibid 16

¹⁸ Ibid paragraph 21 of the report

¹⁹ Page 6 para 22

²⁰ Ibid para 23

The physical and psychological after-effects of torture can be devastating and last for years, affecting not only the victims but also members of their families. Assistance in recovering from the trauma suffered can be obtained from organizations that specialize in assisting victims of torture. In December 1981, the General Assembly established the United Nations Voluntary Fund for Victims of Torture to receive voluntary contributions for distribution to Non-governmental Organizations (NGOs) that provide psychological, medical, social, economic, legal and other forms of humanitarian assistance to victims of torture and members of their families. Depending on the voluntary contributions available, the Fund may finance about 200 NGO projects assisting about 80,000 victims of torture and members of their families in about 80 countries worldwide. The Fund financed the drafting and translation of the present manual and recommended its publication in the Professional Training Series of the Office of the United Nations High Commissioner for Human Rights, following a recommendation of its Board of Trustees, which subsidizes a limited number of projects to train health professionals and others on how to provide specialized assistance to victims of torture²¹.

The broad purpose of the investigation is to establish the facts relating to alleged incidents of torture, with a view to identifying those responsible for the incidents and facilitating their prosecution, or for use in the context of other procedures designed to obtain redress for victims. The issues addressed here may also be relevant for other types of investigations of torture. To fulfil this purpose, those carrying out the investigation must, at a

²¹ Para 22 of the Istanbul protocol manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment 2004

minimum, seek to obtain statements from the victims of alleged torture; to recover and preserve evidence, including medical evidence, related to the alleged torture to aid in any potential prosecution of those responsible; to identify possible witnesses and obtain statements from them concerning the alleged torture; and to determine how, when and where the alleged incidents of torture occurred as well as any pattern or practice that may have brought about the torture.²²

States must ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even in the absence of an express complaint, an investigation should be undertaken if there are other indications that torture or ill-treatment might have occurred.

The investigators, who shall be independent of the suspected perpetrators and the agency they serve, must be competent and impartial. They must have access to or be empowered to commission investigations by impartial medical or other experts. The methods used to carry out these investigations must meet the highest professional standards, and the findings must be made public²³.

The investigator should tape-record a detailed statement from the person and have it transcribed.

The statement should be based on answers given in response

to non-leading questions. Non-leading questions do not make assumptions or conclusions and

allow the person to offer the most complete and unbiased testimony. Examples

of non-leading questions are “What happened to you and where?” rather than “Were you tortured in prison?”. The latter question assumes that what happened to the

²² *ibid*

²³ Page 17 Para 76 of the Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2004

witness was torture and limits the location of the actions to a prison. Avoid asking questions with lists, as this can force the individual into giving inaccurate answers if what actually happened does not exactly match one of the options. Allow the person to tell his or her own story, but assist by asking questions that increase in specificity.

Encourage the person to use all his/her senses in describing what has happened to him or her. Ask what he or she saw, smelled, heard and felt. This is important, for instance, in situations where the person may have been blindfolded or experienced the assault in the dark.

Torture can impact a child directly or indirectly. The impact can be due to the child's having been tortured or detained, the torture of parents or close family members or witnessing torture and violence. When individuals in a child's environment are tortured, the torture will inevitably have an impact on the child, albeit indirect, because torture affects the entire family and community of torture victims. A complete discussion of the psychological impact of torture on children and complete guidelines for conducting an evaluation of a child who has been tortured is beyond the scope of this manual. Nevertheless, several important points can be summarized²⁴.

If a child has been physically or sexually assaulted, it is important, if at all possible, for the child to be seen by an expert in child abuse. Genital examination of children, likely to be experienced as traumatic, should be performed by clinicians experienced in interpreting the findings. Sometimes it is appropriate to videotape the examination so that other experts can give opinions on the physical findings without the child having to be examined

²⁴ Para of the Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2004

again. It may be inappropriate to perform a full genital or anal examination without a general anaesthetic. Furthermore, the examiner should be aware that the examination itself may be reminiscent of the assault and it is possible that the child may make a spontaneous out cry or psychologically decompensate during the examination²⁵.

Another source of literature review is the book *Understanding Torture: Law, Violence, and Political Identity* by John T. Parry is an extremely powerful intervention in the field of Torture studies. John T. Parry's work lies in an ability to effortlessly move from law, to liberal theory, to post colonial studies in diverse contexts to help understand torture.

The central argument of Parry's book is that torture is not aberrational; rather it is already a part and parcel of the modern liberal state. As Parry puts it, "...torture understood colloquially and broadly instead of as a strictly defined term of art is already part of the modern state's coercive apparatus"²⁶. This statement brings us immediately to the relationship between law and violence, and specifically law and torture. While acknowledging that law is actually meant to "channel and regulate" the violence²⁷, Parry ultimately argues that law in its various forms "will likely fail" to regulate state violence²⁸. Turning to rights theory that is closely related to the protections against torture, he argues, in fact, that rights are constitutive of the modern state's ability to construct the individual and subjects, and therefore cannot be understood as adequate constraints on the state's powers. I concur with Parry on his assertion that torture is already part and parcel of us this is

²⁵ Page 57 Para 312 of the Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2004

²⁶ Page 12 the book *Understanding Torture: Law, Violence, and Political Identity* by John T. Parry

²⁷ *Ibid* 26

²⁸ *Ibid* 13

because torture much as it prohibited it is still being practised secretly or opening an example is Guantanamo Bay place based described by its cruel modes of torture

Parry's detailed discussion tries to and focuses on developing the past and the present history of torture in democracies including U.S. as a way to "understanding torture in the war on terror."

The bulk of Parry's book is regarding the ambiguities that remain in the laws, whether International, European, or U.S. In chapters 2, 3, and 4, he systematically analyzes the protections against torture as articulated in International Law, European Law and U.S. law. In each of these instances, while he acknowledges some possibilities of protections, his main attempt is to ultimately point to the limits of these laws, the ambiguities that remain in terms of defining what constitutes torture, and Cruel, Inhuman, and Degrading Treatment (CIDT), and who are eligible for protections under these laws. To give a couple of key examples, Parry notes that while customary International laws are ultimately bound by "politics and diplomacy" as much as by questions of law emerging from the lack of clarity and structure²⁹. The more particular treaties and conventions regarding torture and detention are also found wanting. Geneva Conventions that constitute the core of humanitarian law, which were highly controversial during the U.S. war on terror, are examined closely by Parry. He argues that, while on the face of it, the four Geneva Conventions are expansive to include all people in a "declared war and armed conflict" between parties or "partial or total occupation of the territory of a party to the conventions," in reality the rights under these Conventions depend on the relationship of the people to the conflict³⁰. In other words, he points to the category of "protected persons" which remains ambiguous in these Conventions and has allowed categories such as "illegal or

²⁹ Page 19

³⁰ Page 21 the book understanding torture: law, violence, and political identity by John T. Parry

unlawful combatant” to emerge as possible unprotected persons. Similarly, while Common Article 3 of the Geneva Conventions provides minimum protections to all persons, it is supposed to be applicable to “conflicts not of international character” that the war on terror was not interpreted to be. Parry does acknowledge the argument of other commentators that the combination of additional Protocols to the Geneva Conventions could be used to apply Common Article 3 to all persons; he notes nonetheless that these protections are lower than those provided by the Geneva Conventions as a whole. Furthermore, he suggests that for almost all relevant international laws including the UN Convention against Torture, there is a lack of clarity on the definition of torture and CIDT that greatly restricts the ambit of these laws.

In Parry's analysis of the U.S. law, He explains how the entire process of ratification of the International Convention on Civil and Political Rights (ICCPR) and the UN Convention against torture and CIDT was so fraught that it ultimately ended up undermining the significance of international law in the U.S. legal system. He points to how the impact of these laws was limited to practices outside the United States, that these were not self executing and bound by pre existing constitutional safeguards thereby making them primarily “rhetorical acts.” Thus, he writes, "Both documents are 'the supreme law of the land' ... yet as ratified, they can hardly be called law, they are defined as redundant as a kind of non law or at least as needless law".³¹

Parry points here both to the definitional ambivalences within the laws but also to the limits placed by the scope of the laws. this in may opinon explians why there are still act of torture being commmitted by U.S either secretarly or publically

³¹Page 60 the book understanding torture: law, violence, and political identity by John T. Parry

The interpretation of rights in the U.S. context is theorized more generally by Parry in a linkage chapter that connects the “legal analysis” in the first half of the book to the “relationship between torture, rights and liberal governance” in the latter half³². Here he puts forward the understanding that unlike a natural law based, Kantian, or liberal notion of rights, he considers rights to be based on positive law, emerging from sovereign authority, and, he argues that these rights are constitutive of the relationship between the state/sovereign and its subjects. “Rights thus have a double edge, for they confine even as they liberate, expose even as they protect, and confirm the power of states and other institutions every time they are invoked”³³

Analyzing a range of philosophers from Michael Walzer and Carl Schmitt to Giorgio Agamben, Parry notes that for each of them, there are limits to abstract rights whether in terms of distributive justice, in the economic sphere, or in terms of inscribing state power on bodies of citizens. Here, he makes the provocative argument that “liberal, critical, and authoritarian theorizing inevitably converge in contemporary political discourse”³⁴. For him, consequently, a critique of rights theory explains the crucial argument that the use of torture and state violence is actually consistent with the rule of law and the rights discourse, not constrained by them.

Colonial and Imperial imperatives also play a constitutive role in this torture narrative, a less explored aspect of torture studies. Utilizing post colonial sites such as India, Algeria, and Kenya, Parry points to the continuities between the colonial and the post colonial in modern democracies such as Britain and France both in terms of acts of torture but also the imperatives behind the violence that of controlling the natives. Thus, he makes the very important point that torture in

³² Page76 the book understanding torture: law, violence, and political identity by John T. Parry

³³ Page80 the book understanding torture: law, violence, and political identity by John T. Parry

³⁴ Page 83

democracies has existed both in the past and the present and often the practices are hidden or performed outside and thereby termed as exceptional³⁵ He then uses that framing to understand the U.S. and its imperial past and present. The main argument is not just that there is an exception that gets created in the colonial context due to the imperative of state control but such a framework gets re created in post colonial or non colonial contexts as well such that they are a part and parcel of the modern state's power " Agamben" and are generally seen in all kinds of governments that's to say Liberal and Non Liberal Governments. But most of all, the subjects of such violence are often the colonial subjects but in other non colonial and post colonial contexts, they include all marginalized others. In the U.S., the affected encompasses internally the Native Americans, the blacks, the inmates at the maximum security prisons, the detainees and the immigrants, and on the outside were the Filipinos, the Latin Americans, and the Vietnamese . Hence, Parry notes that "bare life" aka Agamben becomes extendable to all. Here the relationship between law and exception is also notable. For Parry, although torture usually appears in a "metadiscourse of exception" associated with "states of emergency," since the exception is also a part and parcel of routine laws, that helps normalize the former and is often upheld by judicial decisions or legislations.

Parry's biggest contribution is that he challenges a central myth regarding torture, of torture being an aberration, and an exception in modern states; instead he points to the centrality of torture in liberal governance. Torture, for Parry "sits on a continuum of violent state practices, where the use of these forms of violence by modern states as a way of regulating populations is far more significant than whether 'torture' is the particular form of violence used"³⁶ . While

³⁵ Chapter 5 the book understanding torture: law, violence, and political identity by John T. Parry

³⁶ Page 12 the book understanding torture: law, violence, and political identity by John T. Parry

democracies focus on the hidden aspect to make torture appear exceptional, the techniques, the defences, and ambiguities in law actually point to the pervasiveness of the acts. Absolute rights against torture and laws regarding torture that are often assumed to be adequate are exposed by Parry as being limited. His arguments are persuasive at many levels. However, some questions do emerge from his provocative formulations and I note a few of these below in the spirit of carrying forward a conversation that has continued with Parry over the years.

First, Parry notes and critiques the rhetorical quality of certain laws, and treaties, and I wonder whether those rhetorical aspects do have a more serious role to play than Parry acknowledges, namely that it forces the state to constantly negotiate the parameters of violence and innovate and justify forms of violence in response to internal and external critiques. Thus, the state is violent but also has to find ways of taming that violence such that egregious acts and justifications have to be withdrawn, thereby, implying that rhetorical acts play a role of ensuring some forms of accountability.

My second concern is regarding his provocative point about the adequacy of laws and rights. About laws, I share Parry's critiques regarding ambiguities within laws and the challenges concerning their ability to serve as protections against torture. However, often times, Parry comes close to saying that law is entirely incapable of playing that role. For instance, at one point, he writes, ". . . I doubt that law provides a meaningful language for talking about torture at

all”³⁷ however i can not dispute the fact parry notes instances where law has the possibilities of providing ones protections.³⁸

However, in a context where laws and rights have been considered as the final protections against torture, such that democracies claimed themselves to be free of such violence, Parry’s book is a reminder of the flaws of this perspective and while conversations regarding the particular questions noted above will continue, his provocative work is undoubtedly an outstanding contribution to the understanding of torture.

Also this report acts as a source of literature review to this research paper, Moldova report on Torture, Discrimination and Impunity Amnesty International submission to the UN Universal Periodic Review, October 2011

Moldova has made progress towards improving the protection of human rights by ratifying a number of International Human Rights Conventions, and by making changes to some of its legislation to bring it closer in line with International Human Rights Standards. An article criminalizing torture in line with the Convention Against Torture was added to the Criminal Code in 2005. In 2008 a progressive new Law on Assemblies came into force. The law, drafted after extensive consultation with civil society, requires organizers of public events only to inform local authorities of the event, but no longer seek permission, and assemblies of fewer than 50 individuals can meet spontaneously without notification. In June 2008 a draft Law on Preventing

³⁷ Page 13 the book understanding torture: law, violence, and political identity by John T. Parry

³⁸ Page 40 the book understanding torture: law, violence, and political identity by John T. Parry

and Combating Discrimination was circulated for consultation; it had been widely contributed to by civil society and is based on international standards; however to date it has not been passed³⁹.

However Despite some positive steps, Amnesty International's research indicates that torture and other ill-treatment in police custody remains routine in Moldova. The continuing failure by the authorities to carry out effective and impartial investigations into torture allegations maintains a climate of impunity⁴⁰. The organization's concerns are corroborated by the findings of a number of other human rights mechanisms: In the report of its visit from 14 - 24 September 2007, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) found that the problem of ill-treatment by police was a significant and continuing problem and that one-third of the people interviewed by the Committee alleged that they had been ill-treated in detention.⁴¹

Similarly, in the report on his visit to Moldova in July 2008, the UN Special Rapporteur on Torture reported that ill-treatment in police custody was widespread and that he had received serious allegations of torture in some police stations. The actions by police officers during and after the demonstrations that followed the elections on 5 April 2009 revealed that recent legislative and organizational changes had had little influence on police practice, and that many

³⁹ Page, moldova areport on Torture, Discrimination and Impunity Amnesty International submission to the UN Universal Periodic Review, october 2011

⁴⁰ Moldova, Police torture and ill-treatment: 'It's just normal', AI Index: EUR 59/002/2007), available at: <http://www.amnesty.org/en/library/info/EUR59/002/2007/en>.

⁴¹ Report to the Government of Moldova relating to a visit to Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, December 2008, available at: <http://www.cpt.coe.int/documents/mda/2008-39-inf-fra.pdf>.

of the existing safeguards against torture and ill-treatment were ineffective in practice. Hundreds of people were detained by police, including many peaceful protestors. Many of them alleged that they had been subjected to beatings and other forms of ill-treatment. There were reports of beatings using police batons and other objects; in one case a metal shoe-horn was used. Some reported that groups of detainees were made to walk down “corridors” of police officers who beat, punched and kicked them as they passed. A young man who had been detained in Ciocana police station reported that this was done because one detainee had complained to the judge about having been beaten by police. In some cases detainees, including one woman, reported that they were deliberately humiliated by being forced to strip naked and perform gymnastic exercises. The UN Human Rights Advisor for Moldova confirmed that he saw evidence of “acts of cruel and unusual punishment” when he visited the pre-trial detention centre⁴²

Amnesty International is concerned that the state is failing to carry out prompt, thorough and independent investigations into allegations of torture and other ill-treatment. In all the cases monitored by Amnesty International, police officers have continued to carry out their duties while under investigation for torture and other ill-treatment. In some cases, this has meant that victims and witnesses have been put under pressure by police officers to withdraw their testimony. Amnesty International is concerned that the failure to remove police officers from their active duties while under investigation contributes to impunity. The Criminal Procedural Code allows for defence lawyers to request that the prosecutor order the suspension of a suspect

⁴² Report by Thomas Hammerberg Commissioner for Human Rights of the Council of Europe Following his visit to Moldova - 25 to 28 April 2009, Strasbourg, 17 July 2009, CommDH(2009)27.

without pay, however, there is no provision in law for police officers to be suspended on full pay⁴³.

Amnesty International considers that officers who have been found to have abused their position and committed acts of torture or other illtreatment should, as a general rule, not be permitted to remain in office. Furthermore, Amnesty International has come across cases in which police officers have evaded sanctions for torture. Viorica Plate was tortured by police officers in Chisinau in May 2007. Two of the three police officers who had participated in torturing her were charged, tried and upon conviction were sentenced to six years' imprisonment in November 2007. In February 2008, Viorica Plate informed Amnesty International that she and her lawyer had been harassed by the police officers who had tortured her. In March 2008 the Prosecutor General's office informed Amnesty International that the police officers could not be placed in custody because they had appealed against their convictions. In September 2008 the Supreme Court turned down their appeal, however, they remain at liberty and have yet to serve their sentences.

Also this report Torture In The Name of Treatment, human rights abuses in Vietnam, China, Cambodia, and Lao pdr by Human Rights Watch acts as a source of literature to this research. This report brings out a form of torture being perpetrated under the disguise of treatment. Human Rights Watch has been investigating compulsory drug "treatment" centers in China and Southeast Asia since 2007, resulting in the publication of five reports focusing on what are more

⁴³ Page 5 Page, moldova areport on Torture, Discrimination and Impunity Amnesty International submission to the UN Universal Periodic Review, october 2011

properly understood as “drug detention centers” in China, Cambodia, Vietnam, and Lao pdr⁴⁴.³ More than 350,000 people identified as drug users in these countries are estimated to be currently detained for periods of months or years in the name of drug “treatment” and “rehabilitation.”⁴ In addition to people who use drugs, homeless people including street children, people with psychosocial disabilities, and sex workers are also held in such centers. Detention in government centers in the name of “treatment” and “rehabilitation” also takes place in other countries. According to the Thai Ministry of Foreign Affairs, from October 2008 to June 2009, there were an estimated 39,287 people in compulsory drug detention centers in Thailand.⁵ As of 2007, the Malaysian government reportedly operated 28 compulsory drug centers across the country with an average occupancy of between 600 and 1,500 residents.⁶ In Indonesia injecting drug users can be legally detained for up to nine months before sentencing,⁷ and in Singapore people who use [page 4] this proves the fact that torture is almost in all countries Amnesty International bring out the torture being promoted under the disguise of treatment and rehabilitation in Countries mentioned here in before⁴⁵

In an effort to fight torture the United Nations special Rapporteurs on torture¹¹ and health¹² have also spoken out against abuses in drug detention centers. The director of the Drug Policy Coordination Unit of the European Commission, said, “I believe that these types of centers are an abomination.” In March 2012, 12 UN agencies issued a joint statement unequivocally calling for the closure of drug detention centers and the release of detained individuals “without delay.”¹⁴ Among the agencies that issued the statement were the World Health Organization (WHO), the United Nations Program on HIV/AIDS (UNAIDS), the UN Children’s Fund

⁴⁴ page 3 Torture In The Name of Treatment, human rights abuses in Vietnam, China, Cambodia, and Lao pdr by human rights watch

⁴⁵ Page 4 Torture In The Name of Treatment, human rights abuses in Vietnam, China, Cambodia, and Lao pdr by human rights watch

(UNICEF), the International Labour Organization (ILO), and the United Nations Office on Drugs and Crime (UNODC). The statement was an important step that should be followed by concrete measures on the part of the United Nations, international donors, and the governments operating these centers. If the issue of torture is to be resolved.

In spite of such calls for closure, little practical progress has been made towards ending the arbitrary detention of drug users and expanding effective, communitybased, voluntary drug dependency treatment. Many international donors continue to fund activities inside drug detention centers, effectively helping to build the capacity of the centers, reducing operating costs, and maximizing centers' profits⁴⁶.

Human Rights Watch continues to call on the governments of China, Cambodia, Vietnam, and Lao pdr to close down these centers permanently and to conduct an immediate, thorough, and independent investigation into torture, ill treatment, arbitrary detention, and other abuses in drug detention centers. UN agencies and international donors should echo this call and support efforts to close drug detention centers and work with these national governments to expand access to community-based, voluntary drug dependency treatment.

In March 2012 UN agencies issued a joint statement unequivocally calling for the closure of drug detention centers and the release of detained individuals "without delay."⁵¹ The statement is an important step that should be matched by concrete measures on the part of the United Nations, international donors, and the governments operating these centers. For international donors, the need to insist on tangible and timebound steps towards closure is particularly

⁴⁶ Page 5 Torture In The Name of Treatment, human rights abuses in Vietnam, China, Cambodia, and Lao pdr by human rights watch

pressing in those countries such as Vietnam and Lao pdr where International funds continue to support programs and activities in drug detention centers⁴⁷.

Following this report the Human Rights Watch Organisation gave the following suggestions to the governments of China, Cambodia, Vietnam and Lao pdr :- Release current detainees in drug detention centers, as their continued detention cannot be justified on legal or health grounds, Permanently close drug detention centers,

Carry out prompt, independent, and thorough investigations into the use of torture, cruel, inhuman or degrading treatment or punishment, and other human rights abuses and criminal acts. such reports play a fundamental role in bringing to light the evil of torture, the perpetrators and also possible recommendations. There for acting as a source of literature⁴⁸

REDRESS In Its Report Torture in Uganda a Baseline Study On The Situation Of Torture Survivors In Uganda contributed as a source of literature as examined below:-

REDRESS⁴⁹ an Organisation which works internationally to obtain justice for survivors of torture and related crimes and end impunity for governments and individuals who perpetrate it, and to develop and ensure compliance with international standards. The Organisation provides specialised legal assistance to

⁴⁷ Page 20 Torture In The Name of Treatment, human rights abuses in Vietnam, China, Cambodia, and Lao pdr by human rights watch

⁴⁸ Page 21 Torture In The Name of Treatment, human rights abuses in Vietnam, China, Cambodia, and Lao pdr by human rights watch

⁴⁹ REDRESS is an organisation which works internationally to obtain justice for survivors of torture and related crimes and end impunity for governments and individuals who perpetrate it, and to develop and ensure compliance with international standards. The organisation provides specialised legal assistance to individuals and communities in securing their rights, conducts advocacy with governments, parliaments, international organisations and the media and works in partnership with like-minded organisations around the world. page 2

individuals and communities in securing their rights, conducts advocacy with governments, parliaments, International Organisations and the media and works in partnership with like-minded Organisations around the world.

According to the report **Uganda** ratified the UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment in 1986 and is party to a number of other regional and international treaties that outlaw torture and other forms of ill-treatment. Despite this, reports of torture in Uganda continue. When the United Nations Committee on Torture, the body which oversees States' compliance with the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment considered the initial report of Uganda in May 2005, amongst its conclusions and recommendations it noted "the continued allegations of widespread torture and ill-treatment by the State's security forces and agencies, together with the apparent impunity enjoyed by its perpetrators" ... and recommended that the Ugandan Government "Take vigorous steps to eliminate impunity for alleged perpetrators of acts of torture and ill-treatment, carry out prompt, impartial and exhaustive investigations, try and, where appropriate, convict the perpetrators of torture and ill-treatment, impose appropriate sentences on them and properly compensate the victims. This helped a lot in exposing the situation of torture in Uganda and as a result led to the passing of the anti torture bill hence contributing to the development of torture law in Uganda⁵⁰.

⁵⁰ **TORTURE IN UGANDA A Baseline Study on the Situation of Torture Survivors in Uganda BY REDRESS**

Torture is a serious violation of human rights and is strictly prohibited by international law. As the use of torture strikes at the very heart of civil and political freedoms, it was one of the first issues dealt with by the United Nations (UN) in its development of human rights standards. One of its earliest measures was to abolish corporal punishment in colonial territories in 1949. International law prohibits torture and other forms of inhuman and degrading treatment, which cannot be accepted under any circumstances.

Despite being stringently outlawed, torture continues to be practiced in a majority of countries around the world. A 2001 report by Amnesty International highlighted the use of torture by 140 states between 1997 and 2001, and found that every year thousands of perpetrators beat rape and electrocute other human beings.

The term “torture” encompasses a variety of methods including severe beatings, electric shock, sexual abuse and rape, prolonged solitary confinement, hard labor, near drowning, near suffocation, mutilation, and hanging for prolonged periods.

Although there is no exhaustive list of prohibited acts, International law has made it clear that torture is “cruel, inhuman, or degrading treatment.” In addition to the types of severe pain and suffering mentioned above, torture thus also includes being forced to stand spread eagled against the wall for hours; being subjected to bright lights or blind folding; being subjected to continuous loud noise; being deprived of sleep, food or drink; being subjected to forced constant standing or crouching; or violent shaking.

Moreover, torture is not limited to acts causing physical pain or injury. It includes acts that cause mental suffering, such as through threats against family or loved ones. And, regarding human scientific experimentation conducted by governments without the knowledgeable consent of

victims, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment does not contain this provision, although the earlier prohibition against torture in article 7 of the International Covenant on Civil and Political Rights stipulates that “no one shall be subject without his free consent to medical or scientific experimentation.” The human experiments conducted by the Nazis during World War II would fall under this category.

Whether the definition of torture encompasses judicial corporal punishment e.g. amputation, branding and various forms of flogging, including whipping and caning or the death penalty, is a contested issue. Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, often referred to as the UN Convention Against Torture, excludes “pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

Some states have used this provision to argue that legally authorized criminal penalties resulting in physical harm do not constitute torture. Moreover, they claim that this wording by its very existence legitimizes the use of the death penalty or corporal punishment. Opponents disagree saying these provisions are without prejudice to other International Treaties which safeguard the right to life and the security of a person. In fact, in some cases, International and Regional Institutions have found that certain forms of corporal punishment do amount to torture or inhuman and degrading treatment.



1.8. Synopsis of the study.

Chapter one: Introduction.

In this chapter it will defined what torture and other cruel, inhuman or degrading treatment is as given by the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment.

Chapter two: Historical Developments.

This chapter discusses about origin of torture, types of torture the history of efforts against torture that is the Initial Postwar Mobilization Against Torture, Emergence of Medical Rehabilitation of Torture Victims and Founding of the IRCTV.

Chapter three: Legal protection of torture in Uganda.

This chapter narrows down to the crux of the topic, it looks at torture in Uganda and the legal protection in Uganda that provides for absolute protection against torture, cruel, inhuman and other degrading treatment.

Chapter four: The legal international framework.

It will discuss the role played by the Legal and Institutional International Framework that gives absolute protection from torture and other cruel, inhuman or degrading treatment.

Chapter five: Recommendations and conclusions.

Under this chapter, there will be recommendations and conclusions. This will be based on the findings that shall have been reflected in the rest of the paper.

CHAPTER TWO

2.1 Historical development.

Torture is as old as human existence deliberate inflicting severe physical pain and possibly injury on a person through psychological and animal torture also exist⁵¹.

Torture is defined to mean any act by which severe pain or suffering whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or third person information or a confession, punishing him for an act, He or a third person has committed or is suspected to having committed or coercing him or third party or forcing reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquire sense of public official or other person acting in an official capacity, it does not include pain or suffering arising from inherent In a incidental to lawful sanctions⁵².

Torture has existed worldwide since time immemorial .Torture has been carried out or sanctioned by individuals, groups and states throughout history from ancient time to the modern today and forms of torture can vary greatly in duration from only a few minutes to several days or even longer⁵³.

Reasons for torture can include punishment revenge political reasons, deterrence, interrogation or coercion of the victim or a third party or simply the sadistic gratification of those carrying out or observing torture. The torture may or may not intend to kill or injure the victim, but

⁵¹ Article torture from Wikipedia the free encyclopedia.2012/08/30 at 02.09pm

⁵² Article 1 of UN Convention against torture, and other cruel inhuman and degrading treatment 1984

⁵³ Article Torture from Wikipedia the free encyclopedia 2012/08/30 at 02.09pm

sometimes torture is deliberately fatal and can accompany forms of murder or capital punishments. The aim may also be to inflict pain but without causing fatal injury or sometimes any injury at all. In other cases the torture may be indifferent to the condition of the victim⁵⁴,

Although historically torture was sanctioned by some states, torture in the 21st century is prohibited under International law and domestic laws of most Countries. It's considered to be a violation of human rights and is declared to be unacceptable by article 5 of the U.N Universal declaration of Human Rights signatories of the third Geneva Convention and fourth Geneva Convention Officially agree not to torture prisoners in armed conflicts. It's also prohibited by the United Nations Convention Against Torture which has been notified by 147 countries⁵⁵.

2.2 Origin and development of torture.

The origin, of torture dates back to the ancient times where capital punishment were often deliberately painful, several historical penalties include the breaking wheel, willing to death, flaying disembowelment, crucifixion impalement, crushing, stoning, execution by burning, sawing or neck lacing an example from ancient Greece is the story of the brazen bull proposed in the mid 6th century BC the five pain are an example from ancient China⁵⁶.

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ <http://en-wikipedia.org>. (history of Human Rights) 2012/08/30

Deliberately painful methods of execution for several crimes were taken for granted as part of justice until the development of humanization in the 17th century philosophy and cruel and unusual punishment came to be denounced in the English Bill of Rights of 1689⁵⁷.

During the era of antiquity the ancient Greeks and Romans used torture for interrogation until the 2nd century AD torture was only on slaves with exceptions often this point it began to be extended to all members of the lower classes. A slave's testimony was admissible only if extracted by torture. On the assumption that slaves could not be trusted to reveal the truth voluntarily⁵⁸.

One of the oldest methods of torture was crucifixion its antiquity is indicated in its wide use by the Phoenician it was employed also by the Scythian, the Greeks, the Romans, the Persians and the Carthaginians. Crucifixion followed the slave rebellion under Spartacus and the destruction of Jerusalem in 70 AD to frighten other slaves from revolting Crassus crucified 6,000 of Spartacus's men along the Appian way from Capua to Rome. Prior to crucifixion, victim was often savagely whipped with barbed metal lashes to induce exsanguinations or bleeding to death. This had the effect of weakening the culprit and thus spread up what could be an inconveniently long execution process⁵⁹. In other words torture was part of the justice system.

The situation notary different in the middle ages, during this period in medieval and early modern European courts used to torture, depending on the crime of the accused and his or her social

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ Torture Wikipedia the free encyclopedia 2012/08/30

status. Torture was deemed a legitimate means to extract confessions or to obtain the names of the accomplices or other information about a crime. It was permitted by law only if there was already half proof against the accused⁶⁰. It's important to note that during that period torture was usually conducted in secret, in underground dungeons by contrast torturous executions were typically public and wood cuts of English prisoners being hanged, drawn and quartered show large clouds of spectators as do paintings of Spanish auto-da-fe' executions, in which heretics were burned at the stake.⁶¹

In Colonial America, women were sentenced to the stocks with wooden chips on their tongues or subjected to the dunking stool for the gender specific crime of talking too much, certain native American people especially in the area that later became the eastern half of the United States engaged in the sacrificial torture of war captives⁶².

Forms of torture included the chevalet in which an accused witch sat on a pointed initial horse with weights strung from her feet, sexual humiliation torture included forced silting on re-hot stools, cresillons also called pennywinkis in Scotland crushed the tips of fingers and toes in the tips of fingers and toes in a vice-like-device. The Spanish boot or leg screw used mostly in Germany and Scotland was steel that was placed over the leg of the accused and was tightened. The pressure from squeezing of the boot would break the shin bone in pieces an anonymous Scotsman called it the most severe and cruel pain in the world, the echelle more commonly known as the "ladder" or rack was a long table that the accused would lie upon and be started

⁶⁰ Article middle Age the free encyclopedia 2012/08/30

⁶¹ Ibid

⁶² Ibid

violently. The torture was used so intensely that on many occasions the victims limbs would be pulled out of the socket and at times, the links would even be torn from the body extremely. On some special occasions a torturer was used in conjunction with the ladder which would severely squeeze and mutilate the genitals at the same time as the stretching was occurring⁶³.

2.3 History of the work against torture.

2.3.1 Initial post war mobilization against torture.

In the aftermath of the Second World War, the world community resolved in the General Assembly of the United Nations, that torture could no longer be tolerated or legitimized by the state. While there was an existing recognition that torture was prohibited under international Law. This prohibition had never previously been stated in clear terms by the International community. The desire to do so after 1945 was based in no small part on the Nuremberg trials, which had focused world attention on crimes against humanity committed by Nazi war leaders.⁶⁴

The Universal Declaration of Human Rights (1948), the UN's first major achievement in the field of human rights, constitutes the basis for many of the UN human rights instruments that followed. Article 5 of the Universal Declaration of Human Rights states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

The initial post war enthusiasm for International Human Rights Conventions trickled to a virtual standstill during the worst years of cold war, and it was not until 1975 that the United Nations defined the obligations of UN members states relating to torture By virtue of the declaration on

⁶³ Ibid

⁶⁴ Adolph Hitler is an example of one of the Nazi leaders who applied torture. It is said that 6,000,000 Jews were killed during his reign in the infamous gas chambers. <http://www.nafcash.com> 20/09/2012 6:35pm

the protection of all persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment (1975), UN member states are obliged to take effective measures for the prevention of torture and to ensure provision of redress for torture victims. In the postwar years, torture continued to be widely practiced in many repressive regimes around the world. Even well established democracies, which had long since outlawed use of torture by military or law enforcement personnel in their colonies⁶⁵ in Countries in which they had significant political or strategic interests.

With the end of colonial era, and the rapid growth in number of newly independent nations in Africa, the Americas and Asia, the practice of torture spread in ways that could probably not have been anticipated at the founding of the UN.⁶⁶ Many of the new nations were poorly prepared for the transition to independent rule, without strong democratic traditions or structures, and with a police force and military that had little understanding of Human Rights Conventions and Instruments, or of how the prohibition against torture might be relevant to their work, torture was more widespread now than it had ever been, and was being practiced in large number of countries to crush movements for political change and to maintain control over restless communities.

The realization that torture was so widespread and that the universal prohibition against torture was being so blatantly disregarded was the catalyst for the first global campaign against torture by Amnesty International in 1973. In 1975, the World Medical Association adopted the Tokyo Declaration condemning direct or indirect medical participation in the practice of torture ~~★~~

⁶⁵ Torture in Uganda for example started during started during colonization by the British. The predecessors have inherited the practice and continued to silence their critics

⁶⁶ The practice of torture spread because the leaders did not want political critics and instead of shunning old habits like torture applied by the colonialists, they continued to apply it.

In response to the developing medical work against torture and in response to the manifest failure of the International Community to prevent acts of torture from occurring, the UN established the UN voluntary fund for victims of torture (UNVFVT) in 1981 to finance medical and psychological support for torture victims⁶⁷.

The UN Convention against Torture (1984) which entered into force on 26th June 1987 requires state parties to exercise jurisdiction to punish torture committed within their territory either by or against their nationals⁶⁸. The convention also provides for measures to be taken in the prevention of torture and the rehabilitation of torture victims. As of

~~September~~ September 2010, 147 of the 192 UN member states have ratified the UN Convention against Torture. Uganda ratified in 1986. However every year the UN Special Rapporteur on torture receives information on torture being practiced in 60 to 80 countries this is because torture continues to be committed with impunity on a very large scale by most government agencies.

Governments now have a responsibility to ensure the realization and promotion of human rights which include freedom from torture under International Law. Governments that wish to have international credibility today have to ensure that they put in place a framework of law that enables all citizens to enjoy quality of life in which their human rights are recognized and protected.

Emergence of Medical Rehabilitation of Torture Victims.

The medical response to the problem against torture began in 1973 with the launch of campaign by Amnesty International (AI) to help and diagnose torture victims. At this time, very little was

⁶⁷ www.ohchr.org 20/09/2012

⁶⁸ Article 4 of the UN Convention Against Torture

known about torture methods or the consequences of torture on the physical and mental health of torture victims.⁶⁹

The first medical international working group to address the rehabilitation of torture victims was established in 1978 at the first international medical seminar on torture, violation of Human Rights Torture and the Medical profession held in Athens in 1978.

The Creation of a rehabilitation and research center in Copenhagen.

By 1979, it was evident that a need existed to establish an independent rehabilitation center to undertake research in the areas of medical and psychiatric assistance for torture victims. As a result, members of the Danish Medical Group obtained permission to admit and examine torture victims at the university hospital in Copenhagen. In 1982, the Danish medical group which had developed principles for a rehabilitation model established the rehabilitation and research centre for torture victims in Copenhagen as an independent institution with its own premises⁷⁰.

Founding of the IRCT.

In response to the growing need for global support and assistance in the rehabilitation of torture victims, the International Rehabilitation Council for Torture Victims (IRCT) was founded in 1985 initially as the International as an independent organization. Of IRCT but since 1987 as an independent organization. Today the IRCT promotes and supports the rehabilitation of torture victims and the prevention of torture through nearly 200 rehabilitation centers and programmes around the world. In addition, the IRCT works closely with health professionals' organizations

⁶⁹ Torture victims were not aware of their rights at this stage and most of them shield away www.mrct.org/en/

⁷⁰ [En.wikipedia.org/wiki/international](http://en.wikipedia.org/wiki/international)

worldwide including the WMA, WCPT, WPA and the ICN. The IRCT recognizes the critical role and responsibility of medical and health professionals in the rehabilitation of torture victims and prevention of torture.⁷¹

2.4 The concept of torture in the modern times.

Modern sensibilities have been shaped by a profound reaction to the man crimes and crimes against humanity committed by the axis powers in the second world war, which have led to a sweeping international rejection of most if not all aspects of the practice even as many states engage in torture, a few wish to be described as doing so either to their own citizens on the international community. Anxiety of devices bridge this gap including state denial, secret police, need to know a denial that given treatments are torturous in nature, appeal to various laws national or international throughout history and today many states have engaged in torture, albeit un officially⁷².

The following are the forms of torture used in the modern days.

Psychological torture. The number of the criterion for American torture is that it must have no physical marks and psychological torture. Certainly qualifies whether U.S.A officials are threatening to execute a prisoner's family or just falsely claiming that the leader of his terror cell is dead hard to its imagine a form of torture that is more effective or easier to get away with than a steady diet of mis- information and threats⁷³.

⁷¹ Obtained from website <<http://-the-irct/irct-history.htm>.

⁷² Article use of torture in recent times Wikipedia the free encyclopedia.

⁷³ America torture techniques by Tom head about.com guide

Sensory deprivation. Is a form of torture were a victim is locked up in a room for a long time. When your locked up in a cell it's already remarkably easy to lose track of time eliminate all noise and light sources or, as was done to the Guantanamo prisoners at one point, simply bind, blindfold and earmuff a prisoner into temporary oblivion and life becomes a hellish, sanity-destroying expensive. Whether prisoners subjected to long term sensory deprivation can still tell fiction from reality is of course, another question⁷⁴.

Starvation and thirst. Maslow's hierarchy of needs identify basic physical needs as the most fundamental. More fundamental than religion, political ideology or community. A prisoner who is being given enough (unpleasant) food and water to survive, but only just can go as long as a week before looking physically thinner- but will soon find that his or her life revolves around the quest for food.

Sleep deprivation. Studies have shown that missing a night's sleep temporarily drains 10 points from a person IQ consistent sleep deprivation through harassment exposure to bright lights and exposure to loud, jarring music and recordings can drastically impair judgment⁷⁵.

Water torture is one of the oldest and most common forms of torture, came to the U.S with the 1st colonialist and has cropped up many times since then. In the latest incarnation water boding a prisoner is trapped down to a board and then drunken in water until nearly drowned, then

⁷⁴ Ibid

⁷⁵ Ibid

brought back, gasping to the surface, the interrogation repeats the procedure until the desired result is obtained⁷⁶.

Palestinian Hanging (aka Palestinian crucifixion) this form of torture, referred to as “Palestinian hanging government against Palestinians, involves binding the prisoners hands behind his/her back. Often fatigue sets in, the prisoner will inevitably fall forward putting full body weight on the shoulder and impairing breathing. If the prisoner is not released, death by crucifixion results such as the fate of us prisoner manadel al-Jamadi in 2003⁷⁷.

Sweat boxes.

In this form of torture sometimes referred to as “hot box” or simply as “the box”. The prisoner is locked up in a small, but room which due to lack of ventilation, essentially functions as an oven. When the prisoner cooperates, he or she is finally released, long used as a form of torture within the United States (most recently against one Alabama activist in 1998). It is particularly effective in the arid Middle East⁷⁸.

Sexual assault and humiliation.

Various forms of sexual assault and humiliation documents in U.S prisons as forms of torture included forced nudity, forcible smearing of menstrual” blood on prisoners faces, forced lap dances and forced homosexual acts on other prisoners.

⁷⁶ Ibid

⁷⁷ Ibid

⁷⁸ Ibid

2.5 Torture in Uganda.

Reports by civil society groups indicate torture in Uganda continues to be widespread. An example was the 20 year armed conflict in the north of the country and also as part of the regularly actions of the police and security forces⁷⁹. Although torture is practiced against people accused of ordinary crime, political opponents and terrorists suspects are said to be more at risk of torture than detainee. A number of cases reported to NGO's concern prisoner are sighted out for actual or alleged political activities, other cases concern rebel groups and their supposed followed, but in many cases the individuals alleging torture are simply accused of treason or terrorism with no named allegiance to particular group⁸⁰.

Reports by NGOs indicate a wide spread use of torture especially in "safe house" the name given to unauthorized place of detention⁸¹. Detainees commonly report severe beatings during interrogation as well as use of physical torture including hire threats as well as showing live threats as well as showing them other persons who have been tortured and have visible marks to instill fear and / on a compliance.

Torture methods commonly used in Uganda include "Kandonya" this means trying the feet and hands behind the victim, suspension from the ceiling while tied up, "water torture "Liverpool" this is done by forcing the victim of life face up, mouth open while the tap is turned on into the mouth. Severe beating with metal rods, pistols fists, sticks with nails, also death threats including

⁷⁹ Report by REDRESS A baseline Study On The Situation of Torture in Uganda Page 4 Para 1

⁸⁰ Ibid

⁸¹ Page 5 para 2 A baseline study on the situation of torture survivors in Uganda seeking reparation for torture By redress

putting the nozzle of the pistol into the victim's mouth, showing him fresh victim's dead bodies or snakes⁸².

Putting the victim in the back of the vehicle where his cap sit or put their boots on him abusive language and threats; kicking with boots all parts of the body; gang rape of female victim and mutilating genitalia of male suspects through kicking, beating with sticks⁸³.

2.6 In my own Observations.

In my own observations torture has existed since ancient times and has been perpetrated in Europe, U.S.A, Asia and Africa for this purpose Uganda inclusive, it there for connotes the fact that torture is not anew thing but rather it has existed for ages however it's important to note that despite the adverse effects of torture on human physical body and human rights it did not get any attention until of late in the modern times

The researcher also observed that much as torture is illegal and violates human rights and various international treaties and conventions it is still widely practiced either secretly on openly.

⁸² Ibid Page 5 para 3

⁸³ Ibid Page 5 para 1

CHAPTER THREE

3.1 National protection against torture.

3.2 Situation of torture in Uganda.

Uganda has a long history of torture often perpetuated on a very large scale. In 1986 a commission of inquiry was set up to investigate violation of human rights committed from 1962-1986. The commission interviewed over 200 witness finding that a very large number of people in Uganda were subjected to torture and cruel inhuman and degrading treatment⁸⁴, the regimes of Obote, Idi Amin and various interim governments use torture mainly as an instrument of repression given the ethnic base and dictatorial exercise of power, torture was frequently used against members of other ethnic groups and political opponents⁸⁵.

A range of security organs have reportedly been responsible for torture in Uganda through Ugandan law enforcement on the police there is a proliferation of bodies, often operating as plain cloth officers which have arrested, detained and tortured suspects. These agencies have in many instances removed victims from the protection of the law to so-called "safe houses" and are difficult to identify, resulting in a climate of impunity according to Human Rights watch the following agencies are responsible for torture that's the Uganda police force, violent crime crack unit (UCCU) a special unit comprised of various security agencies set up to combat violent crime, replacing the so called operation wembley, Uganda People's Defense Forces (UPDF),

⁸⁴ Pearl of blood, summary of the report of Uganda commission of inquiry into the violation of human rights uppc October 1994, page 29

⁸⁵ Baseline study of torture in Uganda by REDRESS page 12 Para 4

Joint Anti-Terrorism Task Force, Prison guards, Internal Security Organization (ISO), External Security Organization (ESO)⁸⁶.

3.2.1 Victims of torture.

All people and any one can become a victim of torture; however the following groups in Uganda are at a greater risk this includes;

Children: in spite of child protection laws children are often not kept separate from adult's detention facilities ostensibly because the police distort the age of the detainees⁸⁷. This increases the likelihood and vulnerability of children to become victims of torture in the long run.

Prisoners on Death row. In 2008 the Constitutional court ruled that neither the death penalty itself nor the method of hanging is unconstitutional, however, the death penalty should not be mandatory and the execution should not be unreasonably delayed because of suffering caused⁸⁸.

Members belonging to the political opposition there has been a series of cases over the last decade where political opponents have been subjected to torture according to several interviewed political opponents tend to suffer the worst torture. Political opponents denotes those associated with a political party or movement opposed to government policies including members, campaigners and supporters of parties as well as anyone critical of government policies⁸⁹.

⁸⁶State of pain ; Torture in Uganda vol 16 match 2004 by Human rights watch, <http://hrw.org/report/2004>

⁸⁷ Deprivation of right to life, liberty and security of person in Uganda 2006 page 29 by foundation for human rights initiative

⁸⁸ Case of Susan Kigula and 416 and others vs. The Attorney General constitutional petition no 6 of 2003 Holden at Kampala

⁸⁹ Baseline study of torture in Uganda by REDRESS page 15 Para 3

In USA the situation of torture is not any different. Torture in the United States documented and alleged cases of torture both inside the United States and outside its burden by the United State government personnel. This includes the U.S government, fifty U.S state and territorial governments however it's important to note that torture in the United States is illegal and punishable within the United States territorial pounds. Prosecution of abuse occurring on foreign soil outside of usual United States Territorial Jurisdiction is different⁹⁰. This clearing explains were most prisoners and suspected terrorists are transported to Quanta moa bay have they are not subject to the jurisdiction of United States and can there for be tortured using cruel inhuman and degrading methods for example water boding, sexual harassment for example acts of homosexuality on fellow prisoner. Nudity being undressed in public with your eyes blind folded all this is aimed at trying to extract information from the suspects.

Similarly in Nigeria just like most of the African states Uganda inclusive torture is being perpetrated and carried out by government organs most especially the police Amnesty International accuses the police in Nigeria for its notorious and brutality including the use of torture to extract confessions. The Nigerian constitution clearly states that the rights of citizens should not be infringed by the authorities. However according to Zabairu M Uhamu ad a defense lawyer in the Northern Nigeria city of Kano working with the network lawyers without borders. It urges that the police in Nigeria are under intense pressure from the government and the public

⁹⁰An article torture and the united states from Wikipedia, the free encyclopedia

to deliver This means they sometimes resort to using crude tactics to get results hence getting confessions obtained from the victim under torture this is similar to the situation in Uganda⁹¹.

Protection of torture victims in Uganda

A new law which defines and criminalities torture in Uganda was passed by parliament on April 26th 2012 a week later on may 3rd in South Africa the prevention and combating of torture bill was approved by the cabinet and submitted to parliament. It's important to note that this new anti- torture laws are important breakthrough for the prevention of torture on the African continent and came after a year of efforts by local and International human rights groups.

3.3 The protection of torture victims in Uganda.

Renders a confession inadmissible if it was obtained through violence section 24 Of the evidence Act cap 6 laws of Uganda provides that a confession made by an accused person is irrelevant if the making of the confession appears to the court, having regard to state of mind of the accused person and to all the circumstances to have been caused by any violence force threat inducement or promise calculated in the opinion of the court to cause untrue confession to be made⁹².

Article 24 of the 1995 Constitution of Uganda provides for human dignity and protection from inhuman treatment. It states no person shall be subjected to any form of torture, cruel, inhuman or degrading treatment.

Article 25 of the 1995 Constitution of Uganda provides for protection from slavery servitude and forced labour. It states that no person shall:

⁹¹ An article torture and murder... and that's just police by Rosie Collyer

⁹² Evidence Act Cap 6. Laws of Uganda

- i. No person shall be held in slavery or servitude.
- ii. Be required to perform forced labour.

Article 22 of the 1995 Constitution of Uganda provides for protection of right to life as it states no person shall be deprived of life Intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court.

Article 26 of the 1995 Constitution of Uganda protection from deprived of property (i) every person has a right to own property either individually or in association with other.

Article 20 of the 1995 constitution of Uganda provides that fundamental and other human rights and freedoms of individuals are inherent and not granted by the state⁹³.

Article 21 of the 1995 Constitution of Uganda provides for equality and freedom from discrimination. It provides ~~all~~ persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law⁹⁴.

Article 50 of the 1995 Constitution of Uganda provides for enforcement of rights and freedoms by courts.

(1) Any person, who claims that a fundamental or other right or freedom guaranteed under this constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.

(2) Any person or Organization may bring an action against the violation of other persons or groups human rights.

(3) Any person aggrieved by any decision of the court may appeal to the appropriate court.

⁹³ The 1995 Constitution of the Republic of Uganda

⁹⁴ Ibid

(4) parliament shall make laws for the enforcement of the rights and freedoms⁹⁵ under this chapter.

3.4 Barriers that hinder the attainment of justice for the torture victims.

There are a number of obstacles despite the protection available that hinder the attainment of justice by the torture victims as examined below :-

Lack of victim and witness protection:

there is no law providing for effective victim and witness protection, or programme to this end.

Victims and witnesses continue to face intimidation and harassment, which impacts adversely on the ability to pursue cases. hence there are few cases of torture reported⁹⁶.

There is **no explicit right to reparation** for torture that would facilitate access to justice for victims, in particular by using the definition of torture, providing for simplified procedures taking international standards into account, and stipulating adequate forms of reparation. Victims may bring claims before the courts but there are a series of legal obstacles, including short statutes of limitations of two years for bringing cases against the state, excluding recourse to the courts for a large number of torture victims. While cases can still be brought before the Uganda Human Rights Commission there is a 5 year limitation period which can be extended, this does not apply to victims of torture pre-1995 who are left without access to justice, contrary to international standards. Hence hindering justice⁹⁷.

⁹⁵ Ibid

⁹⁶ A report by REDRESS The situation of torture in Uganda pg. 24 para 2

⁹⁷ Ibid page 24 para 3

A further obstacle is that there is no state system providing legal aid for pursuing claims before the courts. Although court fees can be waived for “paupers”, access to the courts is beyond the means of most torture survivors. This therefore means that most torture victims opt to keep quiet and rather live with the scares and effects of torture other than spend the little money and time in the lengthy procedure of court hence hindering justice

lack of awareness of the illegality and effects of torture. The general public does not care about torture survivors; they are aware that torture happens but they are not interested; they think that if you have been tortured then you must be a criminal; they think that you must have been released because you bribed your way out; so you don't get a chance to explain that you were wrongly tortured and that you are innocent you are not taken seriously, but in effect blamed for what happened to you; people don't think it will happen to them, and as long as they are okay they don't care about other people's problems; the issue of torture is not important to the general public; also, victims don't want to talk about it and neither do other people because they are afraid they will be reported and victimised⁹⁸.

3.5 The impact of torture on human rights.

Torture has very adverse effect to the victim both physically and mentally which effects in the long run violate fundamental and non derogable human rights as seen below;-

Torture can lead to a serious Physical condition such as being sexually impotent or no libido; weak; cannot lift heavy objects; loss of memory; lack of sleep. besides that it can also bring about Mental impact: bad-tempered; always worried and easily scared; life has been shortened; disabled; scared to go out at night because might be arrested again; feel sick and worried because

⁹⁸ Ibid page 25 para 1

never told why was believed to have committed a crime; lack of energy; name in press when arrested but not when released; fear of re-arrest⁹⁹.

Incapacity to earn a living: loss of property; lack of financial security as a result of injuries and unable to earn as before; lack of capital to get back on feet; deterioration of life¹⁰⁰.

Social isolation: feel people know what happened to them but do not care; feel separated from their families; loss of employment because of what happened; feel they are outsiders stigmatised in village and don't fit in; still scared; avoid noisy places and meetings; isolated; would like to live where not known; do not feel free in public places¹⁰¹. This violates the right of freedom of association and movement.

Torture usually leads to **Forced Confessions and Illegal Prosecutions**. In a report by the human rights watch Several former detainees told Human Rights Watch that RRU personnel forced them to sign statements under duress, while the detainees were being beaten or threatened with further violence. None of those whom Human Rights Watch interviewed had been brought before a court within the constitutionally mandated 48 hours. In most cases, they were denied access to family or lawyers, in breach of the law.

People arrested by RRU are most often held in the unit's headquarters in Kireka, Kampala. They are usually then handed over to the military authorities to face trial before military courts. In 2009, the country's constitutional court held that military courts do not have jurisdiction over

⁹⁹ Ibid page 22 para 1

¹⁰⁰ Ibid

¹⁰¹ Ibid

civilians. The African Commission has also prohibited the trial of civilians in military courts. But Ugandan authorities ignore these rulings and continue these illegal prosecutions¹⁰².

Torture is cruel, inhuman, and degrading treatment and in its extreme can lead to Extrajudicial Killings this violates a number human rights ranging from right to life, freedom from Torture cruel, in human, and degrading treatment.

There are no precise figures about how many people may have died in RRU custody or as a result of abuses by the unit. But Human Rights Watch research documented at least six extrajudicial killings in 2010. RRU officers shot and killed four people in Kyengera in January. In May, Henry Bakasamba died while officers were questioning him about a robbery of a foreign exchange bureau. In August, RRU officers severely beat Frank Ssekanjako, a 22-year-old robbery suspect, and he died shortly thereafter. In a positive step, three officers have been arrested and charged with Ssekanjako's murder, but they were not charged for the severe beatings of Ssekanjako's co-accuse¹⁰³.

¹⁰² Violence instead of villance torture and illegal detention by Uganda. Rapid response unit by Human Rights Watch 2012/08/30

¹⁰³ An article Uganda: Torture, extortion, killings by Police Unit Human Rights Watch Monaliza 2012/08/30 at 01.58pm

CHAPTER FOUR

4.1 Institutional framework for torture and other cruel, in human and Degrading treatment.

4.2 The role played by international legal framework.

1. The UN Convention Against Torture and other Cruel, Inhuman and Degrading Treatment on punishment was signed in New York on 10th December 1984

This convention also known as the Torture Convention was adopted by the general Assembly of the United Nations on 10 December 1984. The Convention entered into force on 26 June 1987 after it had been ratified by 20 states.

Article 19 of the convention provides for the committees tasks to receive, study and comment on periodic reports from the states parties on the measures they have taken to give effect to their undertakings under the Convention¹⁰⁴.

Article 20 to initiate and investigate when there is reliable information which appears to contain well-funded indications that torture is being systematically practiced in the territory of state party.

Article 21 to receive and examine applications by individuals claiming, to be victims of violation of the convention¹⁰⁵.

¹⁰⁴ UN convention Against Torture and other Cruel, Inhuman and Degrading Treatment

¹⁰⁵ UN convention Against Torture and other Cruel, Inhuman and Degrading Treatment

African Centre for Treatment and Rehabilitation of Torture Victims. Plays a big role in the fight against torture and promotion of human rights and dignity [ACTV] is an Organization initiated with the sole reason of advocating for the abolition of torture, its mainly involved in advocating for the prevention and end of torture Internationally, regionally and Nationally ACTV in its attempt to achieve its objective works on the following¹⁰⁶;-

Advocating for the prevention of torture and provision of services to survivors of torture, Increasing awareness among security agencies and the general and its consequences through trainings and workshops.

Advocating for enactment of laws prohibiting torture and operationalize torture policies and guidelines. Heading the coalition against torture (CAT – Uganda), efforts to have an anti-torture law have to date yielded the passage of the prevention and prohibition of torture bill by the parliament of Uganda as at 26th April, 2012.

Networking for comprehensive advocacy and service provision to survivors of torture, Inspecting provisions and other places of detention. This is in partnership with the relevant security especially Uganda provisions service.

¹⁰⁶ Email actv@actvuganda.org.

ACTV is an active and subscribed member of number of professional associations, coalitions and working group on human rights that are platforms for collective action on Human Rights and Governance.

Article 1 for the purpose of this Declaration, torture means any act by which severe pain or suffering, whenever physical or mental is intentionally inflicted on a person for such purposes as obtaining from him. On third person information a confession, punishing him for an act he or a third person has committed on is suspected to having committed. On intimidating or coercing him on 3rd person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from inherent or incidental to lawful sanctions¹⁰⁷.

Article (2), each state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2) No exceptional circumstances whatsoever whether a state of war or a threat or a war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3) An order from a superior officer or a public authority may not be invoked as a justification of torture.

¹⁰⁷ Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted by General Assembly resolution 3452 (XXX) of 9 December 1975

Article 4 each state party shall ensure that all acts of torture are offences under its animal law the same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity on participation in torture (2) each state party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 19 the state parties shall submit to the committee, through the secretary general of the United Nations, reports on the measures they have taken to give effect to their undertaking under this convention, within one year after the entry into force of this convention for the state party concerned therefore the state parties shall submit supplementary reports every four years on any new measures taken and such other reports as the committee may request¹⁰⁸.

Article 16 each state party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1 when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity in particular, the obligations contained in article 10,11,12 and 13 shall apply with the substitution for references to torture on references to other forms of cruel, inhuman and degrading treatment on punishment. 2) The provisions of this convention are without prejudice to the provisions of any other International instruments national law which prohibit cruel, inhuman degrading treatment or punishment or which relates to extradition on expulsion¹⁰⁹.

¹⁰⁸ Ibid

¹⁰⁹ Ibid

Article 15 each state party shall ensure that any statement which is established to have been made as a result of torture shall not be involved as evidence in any proceedings except against a person accused of torture as evidence that the statement was made.

Article 10 each state party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest detention or imprisonment.

The International Community has developed standards to protect people against torture that apply to all a legal systems in the world. The standards takes into account the diversity of legal systems that exist and set out minimal guarantees that every system should provide judge and prosecutions, have a responsibility to ensure that these standards are adhered to, within the frame work of their own legal systems. Even if a country has not ratified a particular treaty prohibiting torture, because the prohibition of torture is so fundamental, the country is in any even bound on the basis of general international law¹¹⁰.

In many countries, the courts are expected to apply treaties ratified by their states, on general or customary law International law or both. Failure to do so is a failure of professional duty. Even

¹¹⁰ Combating torture. A manual for judges and prosecutors by Conar Foley.

law may not be directly invoked before the courts it is prudent that the judiciary do not place the state in violation of its International law obligation.

A number of UN bodies have been created by a particular Convention to monitor compliance with these standards and provide guidance on how they should be interpreted. These bodies generally issues general comments and recommendations, review reports by states parties and issue concluding observation on the compliance of a state with the relevant Conventions. Some also consider complaints from individuals who claim to have suffered violations. In this way they can provide authoritative. Interpretations of the treaty provisions and the obligations that these place on state parties¹¹¹.

The UN has also set up a number of extra-conventional mechanisms to examine particular issue of special concern to the International Community or the situation in specific Countries. These monitor all states; irrespective of whatever they have ratified a particular Convention and can draw attention to a particular violation.

The prohibition of torture is found in a number of International Human Rights and human.

The Rome Statute, which established the International Criminal Court (ICC), provides for criminal prosecution of individuals responsible for genocide, war crimes, and crimes against humanity. plays a great role in the fight against torture. The statute defines torture as "intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising

¹¹¹ Ibid

only from, inherent in or incidental to, lawful sanctions". Under Article 7 of the statute¹¹², torture may be considered a crime against humanity "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack". Article 8 of the statute provides that torture may also, under certain circumstances, be prosecuted as a war crime.¹¹³

Torture in all forms is banned by the 1948 Universal Declaration of Human Rights (UDHR), which the United States participated in drafting. The United States is a party to the following conventions international treaties that prohibit torture: the American Convention on Human Rights that was signed in 1977 and the International Covenant on Civil and Political Rights that was signed in 1977 and ratified by 1992. It has neither signed nor ratified the Inter-American Convention to Prevent and Punish Torture¹¹⁴. International law defines torture during an armed conflict as a war crime. It also mandates that any person involved in ordering, allowing and even insufficiently preventing and prosecuting war crimes is criminally liable under the command responsibility doctrine.

4.3 Institutional Frame Work on Torture

There are a number of institutions set up both in the international and national level that render help to the victims of torture. The purpose of these institutions is to offer protection, ensure that the convections that prohibit torture are observed by the state parties who have ratified it this convections include: - the Universal Declaration of Human Rights, the U.N Convention Against Torture Cruel Inhuman and Degrading Treatment, The American Convention Against Torture to

¹¹² The Rome Statute

¹¹³ Ibid

¹¹⁴ <http://www.oas.org/juridico/English>.

the European Convention Against Torture the African Charter of Human Rights all prohibit torture cruel inhuman and degrading treatment.

Its important to note that without the Institutional Frame Work the fight against torture would be practically impossible thats because its the Institutional Frame Work which helps to implement the treaties and convections against torture as aresult there work can not be under estimated.

The following are some of the Institutional Frame Work set up to protect and implement ~~convections~~ against torture:- The world Organization Against Torture was Created in 1985 the World Organization Against Torture (OMCT) is today the main coalition of International Non Governmental Organizations (NGO) fighting against torture .Summary Execution , enforced , disappearances and all other cruel , inhuman or degrading treatments with 311 affiliated Organizations in SOS- Torture Network and many tens of thousands correspondents in every Country ,OMCT is the most important network of the Non-governmental Organizations working for the protection and the promotion of human rights in the world¹¹⁵.

This institution is Based in Geneva OMCT's International secretariat provides personalized medical, legal and social assistance to hundreds of torture victims and ensure the daily dissemination of urgent appeals across the world .In order to protect individuals and to fight against impunity .Specific programmes allow it to provide support to specific categories of vulnerable people such as women, children and human rights defenders. In the framework of it's activities, OMCT also submits individual communications and alternative reports to the special mechanisms of the United Nations and actively collaborates in the development of International norms for the protection of human rights. It also enjoys a consultative status with the following institutions;

¹¹⁵ SOS-Torture Network

ECOSOC (United Nations), the International Labour Organization, the African Commission on Human and Peoples Rights, the Organization Internationale de la Francophonie, and the Council of Europe.

4.4 Researchers Own Observations and Opinions

In my humble opinion Torture is an evil which is condemned and prohibited worldwide by various International legal Instruments. This is evidenced by the various International legislation that's to say the Universal Declaration of Human Rights, the U.N Convention Against Torture Cruel Inhuman and Degrading Treatment, The American Convention Against Torture to the European Convention Against Torture the African Charter of Human Rights all prohibit torture cruel inhuman and degrading treatment.

The response towards torture by International Institutional Frame Work is positive this is evidenced by the various Non-governmental Organizations which are advocating for the abolition of torture. This include International Criminal Court of Justice (ICC), the Human Rights Watch Organization, Amnesty International the Redress, African Centre for Rehabilitation all this affects are geared towards the prevention and abolition of torture.

In conclusion therefore torture is an evil condemned by International Community however torture continues to occur either in secret and is perpetuated by government's Organs mainly in an attempt to extract confessions information.

CHAPTER FIVE

5.1 Recommendations and Conclusion.

In the preceding chapter, the writer makes analysis of the laws offering protection to torture victims under the Ugandan law. The Chapter also lays out the limitations to the law protecting the victims. Subsequently we intend to look at the prevailing circumstances which may demand for stronger legal protection of victims of torture through extending the legal protection and removing the existing barriers.

As a result therefore it is imperative that Uganda obliges with the demands of International legislation advocating for the abolition of torture completely in the world hence the is need for more effort to be put toward the protection of individuals form torture inhuman ,cruel and degrading treatment if human rights of the masses are to be upheld .the chapter also tries to put forward possible salutations that can be adopted to improve protection of individuals from torture in Uganda as examined below;-

5.3 Recommendations and Possible Options for According Better Protection to the victims of torture in Uganda.

The following recomendations by the reasercher if put in place can be a great help in the fight against torture and as a result in improve on the situation of human rights in uganda:-

There is need to train personel on the way af handing suspects and victims of torture the fact that not all agencies have received training or have qualifiede personal when it comes to handling suspects without torturing them , with a particular need for more training for Police Special

Constables and the Violent Crime Crack Unit, as well as for agencies responsible for the investigation of crime in order to create awareness of the dangers of torturing suspected criminals.

There is also great need for a stronger perspective on victims and their rights in the light of limited understanding of the consequences of torture for victims, their needs and wants, and how to ensure their rights in relevant proceedings this will encourage more people to report cases of torture and hence reduce or even help in the elimination of torture

There is a need to impart practical skills, such as investigation methods which avoid using torture, and how to ensure victims' rights throughout legal proceedings. Local practices can benefit a lot from comparative and international experiences, including the role of regional and international human rights bodies and foreign and International courts this will help reduce the violation of human rights and use of torture.

Capacity building of civil society and the legal profession should be enhanced and encouraged. This is both with regard to the number of lawyers working on torture cases and the expertise of lawyers currently assisting survivors particularly in respect to how to handle torture cases and how to use strategic litigation for the benefits of a potentially large number of victims. In addition to greater resources, targeted training is needed to enhance existing capacity in order to handle cases of torture effectively and hence eradication of human rights violation.

The NGOs which are advocating for the eradication of torture should also coordinate closely with community groups and victims' groups. NGOs should reach out and make efforts to support victims' Organisations, in particular by providing advice and training to enhance legal capacity. This will help in combating and reducing torture and as a result uphold human rights.

Torture is a crime like any other and therefore the Ugandan government should put in place all mechanism possible to restrain and to make all public officers including the police and the military to desist and from ever using torture and also arrest and bring to justice the officers amongst themselves who engage in such form of inhuman and cruel treatment. The government department should use all administrative action possible to prevent and punish torture.

The government should be keen to put in place a system that will improve the credibility of cases and or complaints against law enforcement officers. In cases of the armed forces engaging in acts of torture the Uganda Armed Forces Act should be amended to provide for internal mechanism to deal with perpetrators of torture.

The Uganda Police should also have an open door policy in working together with institutions like The Uganda Human Rights Commission (UHRC) an institution established under the 1995 Constitution of the Republic of Uganda which has, inter alia, the mandate to:

- i) Investigate, on its own initiative or upon a complaint made by any person or any group of person, the violation of any human rights;
- ii) Visit prisons and places of detention or related facilities with a view to assessing and inspecting the conditions under which the inmates are held and make appropriate recommendations thereon.

In conclusion torture is an evil which to a greater extent impacts on human rights negatively and should therefore be prohibited at all costs. However despite the legal instruments that prohibit torture this include the UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, The Universal Declaration of Human Rights to mention but a few, also the institutional frame work needs to be strengthened by putting in measures to ensure that state party's observe each and every Convention that they have ratified and agreed to be bound by it in those way torture can be abolished and Humanrights will in turn be abolished and upheld

